

II. CONFIDENTIALITY

1. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

It is the policy of the Missouri Department of Elementary and Secondary Education that all information collected and maintained by LEAs/public agencies responsible for the provision of special education and related services for children with disabilities will be protected to ensure the confidentiality of all such information consistent with the specific procedures established in this section.

Definitions

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Educational records" means records maintained by a public agency responsible for the provision of general education or special education and related services that pertain to the special education and related services provided to a student with a disability. The term includes medical, psychological, and educational reports but does not include records of instructional, educational, ancillary, supervisory, and administrative personnel which are the sole possession of the maker and which are not accessible or revealed to any other personnel, except another person who performs on a temporary basis the duties of the individual who made the record. The term includes test instruments or protocols/score sheets and a record of the test results. Copies of test protocols will only be provided if the failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the educational records. The term does not include certain records maintained by a law enforcement unit of a public agency or records maintained about a student with a disability as an employee of the public agency.

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information or from which information is obtained under Part B of IDEA.

Notice to Parents (34 CFR 300.561)

The Department of Elementary and Secondary Education requires each LEA/public agency to give adequate notice to fully inform parents about LEA's/public agency's responsibility to identify, locate, and evaluate children with disabilities who are residents of the LEA/public agency. The notice will be provided in the native language of the parent. The notice shall include:

- A. the different languages the notice is available in;
- B. a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the LEA/public agency intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- C. a summary of the policies and procedures which the LEA/public agency must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and,
- D. a description of all of the rights of parents and children regarding this information, including the rights under Section 444 of the General Educational Provisions Act

and Part 99 of this Title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

Before any major identification, location, or evaluation activity is initiated, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the LEA of the activity. Each LEA is required to conduct the following activities annually prior to November 1:

- A. publish one (1) public notice in local newspapers which describes the responsibility of the local board to conduct the census and the data elements to be obtained;
- B. air one (1) notice on local radio or television which describes the responsibilities of the local board to conduct the census and the data elements to be obtained; and,
- C. place posters/notices in all administrative offices of each building operated by the school that describe the responsibilities of the local board to conduct the census and the data elements to be obtained.

Access Rights (34 CFR 300.562)

Each local school district/public agency shall permit parents to inspect and review any educational records relating to their children that are collected, maintained, and used by the local school district/public agency regarding their student without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, placement or provision of FAPE and, in no case, more than 45 days after the request has been made. The right to review and inspect records includes:

- A. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- B. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and,
- C. the right to have a representative of the parent inspect and review the records.

An agency may presume that the parent has authority to inspect and review records relating to his/her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Record of Access (34 CFR 300.563)

Each participating agency shall maintain a record of all parties obtaining access to education records collected, maintained or used under Part B of IDEA (except access by parents and authorized employees of the participating agency). The record will include:

- A. name(s) of party;
- B. the date access was given; and,
- C. purpose for which the party is authorized to use the records.

The record of access shall be maintained in each file of each pupil that contains confidential information. The agency is required to maintain a list of those employees who have access to educational records and maintain the list in a central location. Only employees of the agency who have a legitimate need to access education records shall be included on the list.

Records of More Than One Student (34 CFR 300.564)

If any education record includes information on more than one (1) child, the agency shall allow parents to inspect and review only the information relating to their child or to be informed of the specific information.

List of Types and Location of Information (34 CFR 300.565)

Each participating agency shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency.

Fees (34 CFR 300.566)

Each participating agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

Amendment of Records at Parent Request and Hearing Rights (34 CFR 300.567)

A parent who believes that information in the educational records collected, maintained or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

The school district/agency shall reach a decision regarding the request within a reasonable period of time, but no more than 45 calendar days after receipt of the request. If the agency agrees to the requested amendment, the records in question shall be amended as agreed to. If the agency denies the request for an amendment, the agency shall:

- A. inform the parent of the denial and advise the parent of their right to a hearing; and,
- B. advise the parent/guardian that they have a right to request a hearing, before an official of the district or agency, if they desire to further challenge the data contained within the student's file. This hearing shall be held in conformity with the requirements outlined in Section 99.22 of the Family Educational Rights and Privacy Act regulations.

If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the school district or agency shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the agency shall inform the child's parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reason for disagreeing with the decisions of the agency. Any explanation placed in the records of the child must be maintained by the agency as a part of the child's records as long as the record or contested portion is maintained by the agency. If the record of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

Consent (34 CFR 330.571)

The school district or agency shall require written consent from the parent before it discloses information from the educational records of a child unless it is authorized to do so under Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974.

Written consent from the parent shall be obtained before any personally identifiable information is:

- A. disclosed to anyone other than officials of participating agencies collecting or using such data; or,
- B. used for any purpose other than meeting any requirement under IDEA.

In the event parent consent cannot be obtained, due process hearing procedures may be invoked by the school district or agency.

If parent's failure to give consent would constitute neglect as defined in the Child Abuse and Neglect Laws of Missouri, Section 210.110 RSMo, a report should be made by the LEA to the proper authorities.

Safeguards (34 CFR 300.572)

Each participating agency shall protect the confidentiality of personally identifiable information of collection, storage, disclosure, and destruction stages. To assure protection, the district/agency shall:

- A. appoint one (1) official at each participating agency to be responsible for ensuring the confidentiality of any personally identifiable information;
- B. provide training or information to all persons collecting or using personally identifiable information in the state's policies and procedures governing such information; and,
- C. maintain, for public inspection, a current list of the names and positions of those employees within the public agency who may have access to personally identifiable data.

Destruction of Data (34 CFR 300.573)

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parent subject to the federal requirement that records be maintained for a minimum of three (3) years from the date the child no longer receives special education and related services. However, a permanent record containing the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be retained without time limitation.

Children's Rights (34 CFR 300.574)

All rights of privacy and educational records indicated herein with regard to parents shall pass to the child upon reaching age 18, except in the case of a child with a disability who is legally determined to be incompetent to make such decisions for himself/herself and for whom legal guardianship or conservatorship is required beyond

the age of 18. In those instances, the legally established guardian or conservator shall maintain the rights to privacy as outlined in this section.

Parents of children who reach age 18 but who are still dependents, as defined in Section 152 of the Internal Revenue Service Code of 1954, maintain the right to inspect and review the child's educational record.

Enforcement (34 CFR 300.575)/Failure to Provide FAPE

The Department of Elementary and Secondary Education, through the process of monitoring, compliance plans and/or assurance statements, will assure that each participating district/agency receiving and/or eligible for funds from federal sources will have all such policies and procedures, as described herein, in effect. In the event a district/agency fails to comply with the provisions of this part, the Department of Elementary and Secondary Education may initiate actions to withhold the payment of federal funds available to the district agency under IDEA and/or the payment of state funds available to support the special education services. The district/agency shall maintain rights provided under Regulation VII.1. contained in this State Plan.

Failure to Provide FAPE

The Missouri Department of Elementary and Secondary Education (DESE) may withhold, in part or whole, state and/or federal special and general education funds when a local education agency (LEA) is determined to be either unwilling or unable to provide FAPE. Such determination will be based on a LEA's refusal or failure to comply with a corrective action or hearing decision as ordered by the DESE in:

- A. a monitoring report stemming from a monitoring for compliance with IDEA, Part B; or,
- B. a child complaint decision in which the LEA has been found out of compliance; or,
- C. a due process hearing decision of a state level hearing.

In each of the above, corrective actions are expected to be achieved within a given timeline, or in the case of a due process decision, implementation is expected to be achieved within a given timeline. Such timelines in the case of a monitoring report or a child complaint decision may be extended by the DESE. However, if the DESE determines it is unreasonable to further extend, or if the DESE attempted to provide technical assistance to the LEA to accomplish the corrective action to no avail, the DESE may determine the LEA is unable or unwilling to provide FAPE.

The DESE will determine the amount of funding to be withheld on a case-by-case basis. The DESE will determine the amount deemed necessary to enforce the decisions rendered in the actions described above. The DESE will notify the LEA in writing of the specific action it has failed to correct, the source and amount of funds that will be withheld, and the date that the withholding of funds will begin. See Regulation IX.3., Policy 6, Fiscal Procedures, Withholding of Payment.

The hearing procedure described in Regulation VII.1. of this State Plan, for disapproval of LEA application, is incorporated herein by reference.